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PAUL HOA

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

PAUL HOA, an individual.

Plaintiff,

vs.

MATHEW CATE, in his individual,  
capacity; MICHAEL MARTEL, in  
his individual capacity; TERRI  
MCDONALD, in his individual  
capacity; BRYAN BEYER, in his  
individual capacity; KATHLEEN  
DICKINSON, in her individual  
capacity; MICHAEL STAINER, in  
his individual capacity; JEFF  
MACOMBER, in his individual  
capacity; ROBERT CALDERON, in  
his individual capacity; MICHAEL  
MARTEL, in his individual capacity;  
M. FOSS, in his individual capacity;  
K. LUTRELL, in his individual  
capacity; RAYMOND  
MATTEUCCI, in his individual  
capacity; RICHARD RILEY, in his  
individual capacity; THOMAS  
ALIOTTO, in his individual capacity;

Case No. 3:12-cv-02078-EMC

**SECOND AMENDED  
COMPLAINT FOR DAMAGES  
AND DEMAND FOR JURY  
TRIAL**

**COUNT I: ACTION UNDER 42  
U.S.C. §1983 FOR DELIBERATE  
INDIFFERENCE;  
COUNT II: ACTION UNDER 42  
U.S.C. §1983 FOR CRUEL AND  
UNUSUAL PUNISHMENT;  
COUNT III: NEGLIGENCE;  
COUNT IV: NEGLIGENT  
SUPERVISION;  
COUNT V: NEGLIGENT  
TRAINING.**

GEORGE MOON, in his individual capacity; RONALD CHAN, in his individual capacity; TAMMY FOSS, in her individual capacity; M. CHIRILA, in his individual capacity; W. RODRIGUEZ, in his individual capacity; DAVID MOORE, in his individual capacity; DAVID F. LOPEZ, an individual; T. GREGORY STAGNITTO, an individual;; BRIDGE TRANSPORT, an entity of unknown form; STAG LEASING, INC., a California corporation; and DOES 1 to 20, Inclusive.

Defendants.

## **SECOND AMENDED COMPLAINT**

COMES NOW PLAINTIFF, PAUL HOA ("Plaintiff"), by and through undersigned counsel, files this Second Amended Complaint against

DEFENDANTS: MATHEW CATE, in his individual capacity; MICHAEL MARTEL, in his individual capacity; TERRI MCDONALD, in his individual capacity; BRYAN BEYER, in his individual capacity; KATHLEEN DICKINSON, in her individual capacity; MICHAEL STAINER, in his individual capacity; JEFF MACOMBER, in his individual capacity; ROBERT CALDERON, in his individual capacity; MICHAEL MARTEL, in his individual capacity; M. FOSS, in his individual capacity; K. LUTRELL, in his individual capacity; RAYMOND MATTEUCCI, in his individual capacity; RICHARD RILEY, in his individual capacity; THOMAS ALIOTTO, in his individual capacity; GEORGE MOON, in his individual capacity; RONALD CHAN, in his individual capacity;

1 TAMMY FOSS, in her individual capacity; M. CHIRILA, in his individual  
 2 capacity; W. RODRIGUEZ, in his individual capacity; DAVID MOORE, in his  
 3 individual capacity; (“Collectively “State Defendants”) and DEFENDANTS:  
 4 DAVID F. LOPEZ , an individual; T. GREGORY STAGNITTO (“Stagnitto”), an  
 5 individual; MICHAEL MARTEL (“MARTEL”), an individual; BRIDGE  
 6 TRANSPORT (“BT”), an entity of unknown form; STAG LEASING, INC., a  
 7 California corporation (Collectively “Non-State Defendants”); and DOES 1 to 20,  
 8 Inclusive, and in support thereof states the following on information and belief:  
 9

### 11 **PRELIMINARY STATEMENT AND PARTIES**

12 1. Defendant MATTHEW CATE ("CATE") is the Former Secretary of  
 13 the California Department of Corrections and Rehabilitations. He is sued in his  
 14 individual capacity. The CDCR is responsible for the operations of the California  
 15 state prison system. As the secretary, CATE is responsible for the operation of all  
 16 the prison facilities, including the area used to load and unload goods containing  
 17 the loading dock of the Prison, and is personally responsible for the policies of the  
 18 personal safety of prisoners in their assigned work duties at the Prison. He is  
 19 under a legal obligation to provide and maintain a safe and healthful workplace;  
 20 was required to establish, implement, and maintain an injury prevention program;  
 21 to assign responsibilities to persons for the prevention of injuries; to establish a  
 22 system of communicating matters related to workplace safety; to inspect, assess  
 23 and control existing or potential hazards; to allocate resources for the prevention  
 24 of workplace injury; to document injuries and assessment of hazards; and to  
 25 survey their workplace taking into consideration history of accidents, current  
 26  
 27  
 28

1 safety standards, and safe work practices.

2  
3 2. Defendant Terri McDonald ("McDonald") is or was the  
4 Undersecretary of Operations of the California Department of Corrections and  
5 Rehabilitations. McDonald is sued in McDonald's individual capacity. The  
6 CDCR is responsible for the operations of the California state prison system. As  
7 the Undersecretary of Operations for CDCR, McDonald is responsible for the  
8 operation of all the prison facilities, including the area used to load and unload  
9 goods containing the loading dock of the Prison as it relates with inmate safety,  
10 and is personally responsible for the policies that disregards the personal safety of  
11 prisoners in their assigned work duties at the Prison. McDonald is under under a  
12 legal obligation to provide and maintain a safe and healthful workplace; was  
13 required to establish, implement, and maintain an injury prevention program; to  
14 assign responsibilities to persons for the prevention of injuries; to establish a  
15 system of communicating matters related to workplace safety; to inspect, assess  
16 and control existing or potential hazards; to allocate resources for the prevention  
17 of workplace injury; to document injuries and assessment of hazards; and to  
18 survey their workplace taking into consideration history of accidents, current  
19 safety standards, and safe work practices.  
20  
21  
22

23 3. Defendant Bryan Beyer ("BEYER") is or was the Deputy Director of  
24 Court Compliance for the California Department of Corrections and  
25 Rehabilitations. BEYER is sued in his individual capacity. The CDCR is  
26 responsible for the operations of the California state prison system. As the Deputy  
27 Director of Court Compliance for CDCR, Beyer is responsible for the operation of  
28

1 all the prison facilities, including the area used to load and unload goods  
2 containing the loading dock of the Prison as it relates with inmate safety, and is  
3 personally responsible for the policies that disregards the personal safety of  
4 prisoners in their assigned work duties at the Prison as it relates to the Court  
5 compliance.  
6

7         4. Defendant Kathleen Dickinson ("Dickinson") is or was the Deputy  
8 Director of Facility Support and Adult Institutions for the California Department  
9 of Corrections and Rehabilitations. Dickinson is sued in her individual capacity.  
10 The CDCR is responsible for the operations of the California state prison system.  
11 As the Deputy Director for Facility Support and Adult Institutions for CDCR,  
12 Dickinson is responsible for the operation of all the prison facilities, including the  
13 area used to load and unload goods containing the loading dock of the Prison as it  
14 relates with inmate safety, and is personally responsible for the policies that  
15 disregards the personal safety of prisoners in their assigned work duties at the  
16 Prison. She is under a legal obligation to provide and maintain a safe and  
17 healthful workplace; was required to establish, implement, and maintain an injury  
18 prevention program; to assign responsibilities to persons for the prevention of  
19 injuries; to establish a system of communicating matters related to workplace  
20 safety; to inspect, assess and control existing or potential hazards; to allocate  
21 resources for the prevention of workplace injury; to document injuries and  
22 assessment of hazards; and to survey their workplace taking into consideration  
23 history of accidents, current safety standards, and safe work practices.  
24

25         5. Defendant Michael Stainer ("STAINER") is or was the Associate  
26  
27  
28

1 Director of Facility Operations for the California Department of Corrections and  
2 Rehabilitations. STAINER is sued in his individual capacity. The CDCR is  
3 responsible for the operations of the California state prison system. As the  
4 Associate Director of Facility Operations for CDCR, STAINER is responsible for  
5 the operation of all the prison facilities, including the area used to load and unload  
6 goods containing the loading dock of the Prison as it relates with inmate safety,  
7 and is personally responsible for the policies that disregards the personal safety of  
8 prisoners in their assigned work duties at the Prison. He is under a legal  
9 obligation to provide and maintain a safe and healthful workplace; was required to  
10 establish, implement, and maintain an injury prevention program; to assign  
11 responsibilities to persons for the prevention of injuries; to establish a system of  
12 communicating matters related to workplace safety; to inspect, assess and control  
13 existing or potential hazards; to allocate resources for the prevention of workplace  
14 injury; to document injuries and assessment of hazards; and to survey their  
15 workplace taking into consideration history of accidents, current safety standards,  
16 and safe work practices.

20  
21 6. Defendant Jeff Macomber ("MACOMBER") is or was the Assistant  
22 Director of Operation Support for the California Department of Corrections and  
23 Rehabilitations. MACOMBER is sued in his individual capacity. The CDCR is  
24 responsible for the operations of the California state prison system. As the  
25 Assistant Director of Operation Support for CDCR, MACOMBER is responsible  
26 for the operation of all the prison facilities, including the area used to load and  
27 unload goods containing the loading dock of the Prison as it relates with inmate  
28

1 safety, and is personally responsible for the policies that disregards the personal  
2 safety of prisoners in their assigned work duties at the Prison. He is under a legal  
3 obligation to provide and maintain a safe and healthful workplace; was required to  
4 establish, implement, and maintain an injury prevention program; to assign  
5 responsibilities to persons for the prevention of injuries; to establish a system of  
6 communicating matters related to workplace safety; to inspect, assess and control  
7 existing or potential hazards; to allocate resources for the prevention of workplace  
8 injury; to document injuries and assessment of hazards; and to survey their  
9 workplace taking into consideration history of accidents, current safety standards,  
10 and safe work practices.

11  
12  
13 7. Defendant Robert Calderon ("CALDERON") is or was the Director  
14 of Office of Policy Standardization for the California Department of Corrections  
15 and Rehabilitations. CALDERON is sued in his individual capacity. The CDCR  
16 is responsible for the operations of the California state prison system. As the  
17 Director of Office of Policy Standardization for CDCR, CALDERON is  
18 responsible for the policy and procedures related with the operation of all the  
19 prison facilities, including the area used to load and unload goods containing the  
20 loading dock of the Prison as it relates with inmate safety, and is personally  
21 responsible for the policies that disregards the personal safety of prisoners in their  
22 assigned work duties at the Prison. He is under a legal obligation to provide and  
23 maintain a safe and healthful workplace; was required to establish, implement,  
24 and maintain an injury prevention program; to assign responsibilities to persons  
25 for the prevention of injuries; to establish a system of communicating matters  
26  
27  
28

1 related to workplace safety; to inspect, assess and control existing or potential  
2 hazards; to allocate resources for the prevention of workplace injury; to document  
3 injuries and assessment of hazards; and to survey their workplace taking into  
4 consideration history of accidents, current safety standards, and safe work  
5 practices.  
6

7 8. Defendant Michael Martel (“MARTEL”) is or was the Warden at San  
8 Quentin when the Plaintiff was injured. Based on Plaintiff’s information and  
9 belief, MARTELL, who is sued in his individual capacity, is responsible for the  
10 safety of all inmate programs and inmates. He failed to implement any policies  
11 and procedures regarding inmate safety at the dock.  
12

13 9. Defendant M. Foss (“MFOSS”) is or was the Associate Warden at  
14 San Quentin when the Plaintiff was injured. Based on Plaintiff’s information and  
15 belief, FOSS, who is sued in his individual capacity, is responsible for the safety  
16 of all inmate programs and inmates. MFOSS is responsible to ensure that there  
17 are policies and procedure in place for inmate safety for all inmate work programs.  
18

19 10. Defendant W. Rodriguez (“RODRIGUEZ”) is or was the Chief  
20 Deputy Warden at San Quentin when the Plaintiff was injured. Based on  
21 Plaintiff’s information and belief, RODRIGUEZ, who is sued in his individual  
22 capacity, is responsible for the safety of all inmate programs and inmates.  
23 RODRIGUEZ is responsible to ensure that there are policies and procedure in  
24 place for inmate safety for all inmate work programs.  
25

26 11. Defendant Tammy Foss (“TFOSS”) is or was the Business Manager  
27 II at San Quentin when the Plaintiff was injured. Based on Plaintiff’s information  
28



1 and belief, TFOSS, who is sued in her individual capacity, is responsible for the  
2 safety of all inmate programs and inmates and oversees these programs as the  
3 Business Manager. TFOOS is responsible to ensure that there are policies and  
4 procedure in place for inmate safety for all inmate work programs.  
5

6 12. Defendant M. Chirila ("CHIRILA") is or was the Facility Captain at  
7 San Quentin when the Plaintiff was injured. Based on Plaintiff's information and  
8 belief, CHIRILA, who is sued in her individual capacity, is responsible for the  
9 safety of all inmate programs and inmates and oversees these programs as the  
10 Loading Dock facility. CHIRILA is responsible to ensure that the inmates are  
11 properly trained and equipped to perform their services.  
12

13 13. Defendant Raymond Matteucci ("MATTEUCI") is or was the  
14 Supervisor at San Quentin when the Plaintiff worked. Based on Plaintiff's  
15 information and belief, MATTEUCI, who is sued in his individual capacity, is one  
16 of the supervisors that is responsible for the safety of all inmates in the work  
17 programs and trains and educates them to do their job. The supervisor also takes  
18 any complaints from the inmates and ensures that the proper person is informed of  
19 the complaint. The supervisors duty and responsible is to ensure that the inmate is  
20 safe and properly conducting their work.  
21

22 14. Defendant Thomas Aliotto ("ALIOTTO") is or was the Supervisor at  
23 San Quentin when the Plaintiff worked. Based on Plaintiff's information and  
24 belief, ALIOTTO, who is sued in his individual capacity, is one of the supervisors  
25 that is responsible for the safety of all inmates in the work programs and trains  
26 and educates them to do their job. The supervisor also takes any complaints from  
27  
28

1 the inmates and ensures that the proper person is informed of the complaint. The  
2 supervisors duty and responsible is to ensure that the inmate is safe and properly  
3 conducting their work.  
4

5 15. Defendant George Moon ("MOON") is or was the Supervisor at San  
6 Quentin when the Plaintiff worked. Based on Plaintiff's information and belief,  
7 MOON, who is sued in his individual capacity, is one of the supervisors that is  
8 responsible for the safety of all inmates in the work programs and trains and  
9 educates them to do their job. The supervisor also takes any complaints from the  
10 inmates and ensures that the proper person is informed of the complaint. The  
11 supervisors duty and responsible is to ensure that the inmate is safe and properly  
12 conducting their work.  
13  
14

15 16. Defendant Ronald Chan ("CHAN") is or was the Supervisor at San  
16 Quentin when the Plaintiff worked. Based on Plaintiff's information and belief,  
17 CHAN, who is sued in his individual capacity, is one of the supervisors that is  
18 responsible for the safety of all inmates in the work programs and trains and  
19 educates them to do their job. The supervisor also takes any complaints from the  
20 inmates and ensures that the proper person is informed of the complaint. The  
21 supervisors duty and responsible is to ensure that the inmate is safe and properly  
22 conducting their work.  
23

24 17. Defendant David Moore ("MOORE") is or was the Supervisor at San  
25 Quentin when the Plaintiff worked. Based on Plaintiff's information and belief,  
26 MOORE, who is sued in his individual capacity, is one of the supervisors that is  
27 responsible for the safety of all inmates in the work programs and trains and  
28

1 educates them to do their job. The supervisor also takes any complaints from the  
2 inmates and ensures that the proper person is informed of the complaint. The  
3 supervisors duty and responsible is to ensure that the inmate is safe and properly  
4 conducting their work.  
5

6 18. Defendant Richard Riley ("RILEY") is or was the Procurement and  
7 Services Officer II at San Quentin when the Plaintiff worked. Based on Plaintiff's  
8 information and belief, RILEY, who is sued in his individual capacity, is one of  
9 the Officers that is responsible for the safety of all inmates in the work programs  
10 and ensures they are complying with the law. The Officer also takes any  
11 complaints from the inmates and ensures that the proper person is informed of the  
12 complaint.  
13

14 19. Defendant K. Lutrell ("LUTRELL") is or was a Correctional Officer  
15 at San Quentin when the Plaintiff worked. Based on Plaintiff's information and  
16 belief, LUTRELL, who is sued in his individual capacity, is one of the  
17 Correctional Officers that is responsible for the safety of all inmates in the work  
18 programs and ensures they are complying with the law. The Correctional Officer  
19 also takes any complaints from the inmates and ensures that the proper person is  
20 informed of the complaint.  
21

22 20. Defendant David Lopez ("LOPEZ") was a resident in the City of  
23 Oakdale, Stanislaus County. At the time of this incident, Plaintiff is informed and  
24 believes, that Defendant Lopez was an employee of Defendant Stagnitto,  
25 Defendant Stagnitto is an individual doing business as Bridge Transport.  
26

27 21. Defendant T. GREGORY STAGNITTO ("STAGNITTO") was at all  
28

1 relevant times an individual, residing in the Marin County, doing business under  
2 the fictitious business name of "Bridge Transport."

3  
4 22. Plaintiff is informed and believes, that at all relevant times, BRIDGE  
5 TRANSPORT ("BT"), an entity of unknown form, was a contracting party  
6 authorized and approved by CDCR and the Prison, providing services and acting  
7 in accordance with the policy and directives of defendants CDCR and the Prison.  
8

9 23. Plaintiff is informed and believes, that at all relevant times, STAG  
10 LEASING, INC. ("SL"), was a corporation formed and existing under the laws of  
11 the State of California. Plaintiff is informed and believes that SL was a  
12 contracting party authorized and approved by CDCR and the Prison, providing  
13 services and acting in accordance with the policy and directives of defendants  
14 CDCR and the Prison.  
15

16 24. This is an action to recover damages for violations of the Plaintiff's  
17 constitutional rights by state agencies, acting under the color of law, and their  
18 contractors.  
19

20 **SATISFACTION OF GOVERNMENT CODE REQUIRMENTS**

21 25. Plaintiff has complied with the requirements of Government Code  
22 §§905 et seq. This action is filed within six months of the date of rejection of  
23 Plaintiff's claim. See Right to Sue attached hereto and marked as Exhibit "A".  
24

25 **JURISDICTION AND VENUE**

26 26. This is a civil action seeking damages for a violation of civil rights  
27 by the Defendants based on a federal question with accompanying state law  
28 claims. (42 U.S.C. Section 1983, et seq.; 17 U.S.C. Sections 1331 and

1343(1)(3)(4))

27. This Court has jurisdiction under 17 U.S.C. section 101, et seq.; 28 U.S.C. section 1331 and 1376 (Federal Question and Supplemental Jurisdiction).

28. This Court has personal jurisdiction over defendants in the many of the acts complained herein occurred in the State of California and in this District.

29. Venue in this District is proper under 28 U.S.C. section 1391(b) and (c). The acts of complained upon herein occurred in the State of California and this District. In addition certain defendants reside and are doing business in the State of California and this district.

30. Venue is proper in the Northern District of California with respect to Defendants CATE, McDonald, BEYER, Dickinson, STAINER, MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL, SL, and Lopez.

31. Plaintiff has performed all conditions precedent to the commencement of this action or they have occurred, including filing and serving notice of claim in compliance with state Government torts claims act as well as naming the individual defendants (in their non-state capacity) and the non-state defendants.

### **STATEMENT OF THE CASE**

32. Plaintiff was convicted of a nonviolent drug related felony in the San Francisco County Superior Court. He was sentenced to 8 years at Prison, was a model inmate and was expected to be released on parole in April of 2012.

1           33. Plaintiff suffered catastrophic injuries, including severed spinal cord  
2 damage, deep lacerations, fractured and crush bone damage, lacerated and crush  
3 damage to soft tissue and major organs, and damage to his lungs, leaving him on  
4 ventilation machine and permanently disabled and immobile, and continues to  
5 suffer and endure catastrophic, life threatening, debilitating, severe, and traumatic  
6 injuries. Plaintiff is currently immobilized and suffers loss of use of all of his  
7 limbs and is assisted by ventilator to breathe.  
8

9  
10           34. These injuries were suffered as a nonviolent inmate waiting parole at  
11 SAN QUENTIN STATE PRISON ("Prison") facility maintained and operated by  
12 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION  
13 ("CDCR") .  
14

15           35. Plaintiff is informed and believes that Defendants DAVID LOPEZ  
16 ("LOPEZ"), T. GREGORY STAGNITTO ("STAGNITTO"), BRIDGE  
17 TRANSPORT ("BT"), and STAG LEASING, INC. ("SL") (collectively, the "non-  
18 state defendants"), were private parties contracted by the state defendants, the  
19 CATE, McDonald, BEYER, Dickinson, STAINER, MACOMBER, CALDERON,  
20 MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI,  
21 ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL, or alternatively all of  
22 them, to provide truck and trailer with delivery services to CDCR. Accordingly,  
23 COUNTS III, IV, and V, for tort claims of negligence, negligent supervision, and  
24 negligent training are directed at these non-state defendants only.  
25  
26

27           36. The Prison located at San Quentin, California, in the County of  
28 Marin, and is one of many facilities maintained and operated by CDCR, that

1 currently houses inmates at double the capacity the facilities were designed to  
2 house in long term custodial detention. The Prison built in 1852 with a design  
3 capacity to hold 3,082 inmates, as of December 2008, had a total population of  
4 5,256 for occupancy in excess of 170 percent of the design capacity.  
5

6 37. The Prison, in order to supply its overcrowded inmate population  
7 uses several make-shift loading docks that do not use an elevated platform to keep  
8 workers on a different elevation than the trucks delivering goods. Rather, the  
9 Prison uses several elevated ramp that permit forklifts to ride up a ramp and into a  
10 trailer that is driven in reverse up to the elevated ramp. The trailers must have its  
11 doors open because the trailer rear must touch the edge of the elevated ramp to  
12 permit the forklifts to travel over and into the trailer.  
13  
14

15 38. These trailers deliver essential supplies of food, water, and disposable  
16 supplies for the inmates and staff living and working in the Prison, including the  
17 Plaintiff.  
18

19 39. The loading docks and the method of delivering supplies to the  
20 Prison has not grown to meet the explosion of inmate population, and this  
21 operational feature has suffered directly from overcrowding as all other areas of  
22 the Prison.  
23

24 40. Based on information and belief, the Prison through the acts of  
25 CATE, McDonald, BEYER, Dickinson, STAINER, MACOMBER, CALDERON,  
26 MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI,  
27 ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL have deliberately  
28 failed to provide the proper funding to update the loading docks and the method of

1 delivery to protect the inmate safety.

2  
3 41. Based on information and belief, these named defendants CATE,  
4 McDonald, BEYER, Dickinson, STAINER, MACOMBER, CALDERON,  
5 MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI,  
6 ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL made a selection that  
7 moneys would not be spent on inmate safety at the loading dock but would be  
8 spent on additional prison guards and uniforms.  
9

10 **The Prison Procedures at Plaintiff's Workplace.**

11 42. In Prison, inmates are assigned work based on their risk factor and  
12 behavior in prison. During the time Plaintiff was in prison, Plaintiff was  
13 considered a good inmate with no demerits, and considered a low risk factor.  
14

15 43. Accordingly, Plaintiff was assigned to work the loading docks, which  
16 provides limited access to the outside prison walls, where the loading are located  
17 and a small degree of independent movement along the established parameters of  
18 the ground level of the loading dock where trucks and trailer travel without any  
19 other person directing or slowing vehicle traffic.  
20

21 44. Trailers containing the necessary supplies used by the Prison are  
22 unloaded after the trailer doors are opened. Depending on the truck at issue the  
23 loading of the trailers may have different methods.

24 45. Trucks are required to reverse up to the loading dock so that pallets  
25 can be removed by ramp using forklifts or pallet movers. However, depending on  
26 the type of trailer doors contained on the trailer they are either opened before the  
27 truck is reversed to the loading dock or opened at the loading dock.  
28



1           46. Plaintiff was not trained as to these methods prior to working at the  
2 loading dock. There was no training provided to the Plaintiff as to these methods  
3 prior to working.  
4

5           47. Based on information and belief, Plaintiff alleges that training was  
6 not provided because there was deliberate indifference as to inmate safety.  
7

8           48. Based on information and belief, Plaintiff alleges that there was a or  
9 several meetings that was comprised with McDonald, BEYER, Dickinson,  
10 MACOMBER, STAINER, CALDERON, MARTEL regarding inmate safety  
11 regarding work at the loading dock to discuss including but not limited training,  
12 policies and procedures, qualifications for inmates, equipment to perform job  
13 duties, condition of the loading dock, and the Court Compliance Order.  
14

15           49. Based on information and belief, Plaintiff alleges that McDonald,  
16 BEYER, Dickinson, MACOMBER, STAINER, CALDERON, MARTEL,  
17 MFOOS, RODRIGUEZ, determined that no changes were necessary even though  
18 they were aware that there were no policies an procedures, no training for loading  
19 and unloading forklifts, and cost issues.  
20

21           50. Based on information and belief, Plaintiff alleges that the decision  
22 reached by McDonald, BEYER, Dickinson, MACOMBER, STAINER,  
23 CALDERON, MARTEL, MFOOS, RODRIGUEZ was ratified and endorsed by  
24 CATE.  
25

26           51. Based on information and belief, Plaintiff alleges that several  
27 individuals, including the Plaintiff, complained to MATTEUCI, ALIOTTO,  
28 CHIRILA, MOON, CHAN, MOORE, RILEY, LUTRELL that it was unsafe that

1 they should be provided additional training.

2  
3 52. Based on information and belief, Plaintiff alleges that MATTEUCI,  
4 ALIOTTO, CHIRILA, MOON, CHAN, MOORE, RILEY, LUTRELL, TFOOS,  
5 RODRIGUEZ, MFOOS, MARTEL did not provide the necessary training because  
6 they felt that the inmates did not need it and were carrying out the directives of  
7 McDonald, BEYER, Dickinson, MACOMBER, STAINER, CALDERON,  
8 MARTEL and CATE.  
9

10 53. Based on information and belief, Plaintiff alleges and believes that  
11 MATTEUCI, ALIOTTO, CHIRILA, MOON, CHAN, MOORE, RILEY,  
12 LUTRELL, TFOOS, RODRIGUEZ, MFOOS, MARTEL deliberately did not  
13 provide the training because their safety was not a concern to them.  
14

15 54. Based on information and belief, Plaintiff and the other inmates make  
16 this belief based on the fact that they were told, by MATTEUCI, ALIOTTO,  
17 CHIRILA, MOON, CHAN, MOORE, RILEY, LUTRELL, they could not speak  
18 with anyone about their worries and that they could not even speak with driver's  
19 of the commercial vehicles when they backed up the vehicles to the dock. In  
20 essence, the inmates were told to stay quiet.  
21

22 55. There are no mirrors for drivers to check the large blindside in the  
23 rear of the trailers.

24 56. Commercial companies are contracted to supply goods at the Prison.  
25 These goods are brought to the Prison by trailer trucks by outside commercial  
26 companies.  
27

28 57. Because of the lack of modern loading docks the Prison loading

1 docks are used at a high frequency, relatively high speed up to the loading dock  
2 and out of the area, many times a day, and drivers are not permitted to open their  
3 windows or to exit their vehicle, and the trucks leave their engine on throughout  
4 the process of delivering goods.  
5

6 58. Based on information and belief, it was a deliberate choice by the  
7 Defendants CATE, McDonald, BEYER, Dickinson, STAINER, MACOMBER,  
8 CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA,  
9 MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL to keep  
10 the loading dock in its condition because these Defendants made an election that  
11 inmate safety is not priority knowing they were doing a dangerous job and that  
12 they were at risk for a serious injury because they were inmates.  
13  
14

15 59. Trailer trucks will be inspected by guards at or near the Prison  
16 entrance as they enter and exit the Prison.

17 60. Once the trailer trucks are in the warehouse area, there are no video  
18 surveillance cameras or prison guards in the area where the trucks are unloaded.  
19

20 61. The area is covered by gravel and the elevated ramp permits forklifts  
21 to drive into the trailers to unload cargo quickly.

22 62. Plaintiff alleges the only training they received, which is contested,  
23 was the operation of the forklift.

24 63. There are devices used to slow vehicles down and no use of any  
25 equipment to limit or prevent movement of the trucks, such as inexpensive chocks  
26 or wooden wedges for the wheels. These devices did not exist at the Prison.  
27

28 64. Plaintiff alleged based on his information and belief, that Defendants

1 CATE, McDonald, BEYER, Dickinson, STAINER, MACOMBER, CALDERON,  
2 MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI,  
3 ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL made a conscience  
4 choice not provide the inmates who work at the loading dock with chocks or  
5 wooden wedges as they were not necessary for the inmates to the do job. These  
6 defendants made a deliberate election that inmate safety concern was not  
7 important.  
8  
9

10 65. In fact, Plaintiff alleges on his information and belief, other inmates,  
11 including himself, inquired about the chocks and wooden wedges with  
12 MATTEUCI, ALIOTTO, CHIRILA, MOON, CHAN, MOORE, RILEY,  
13 LUTRELL and were told that it does not make a difference and do not ask.  
14

15 66. Inmate work is supervised by MATTEUCI, ALIOTTO, CHIRILA,  
16 MOON, CHAN, MOORE, RILEY, LUTRELL, who are not CALIFORNIA or  
17 Prison employees, but contractors hired by the state of CALIFORNIA, the Prison,  
18 or CDCR. These supervisors work according to guidelines and policies developed  
19 and enforced by the state defendants specifically: McDonald, BEYER, Dickinson,  
20 MACOMBER, STAINER, CALDERON, MARTEL, MFOOS, RODRIGUEZ,  
21 and TFOOS.  
22

23 67. Plaintiff alleges on his information and belief, there are no policies  
24 developed as it relates to inmate safety for the loading dock.  
25

26 68. Plaintiff alleges on his information and belief, the reason why there  
27 are no policies and procedures in place as it relates to inmate safety on the loading  
28 dock is based on the fact that the Defendants CATE, McDonald, BEYER,

1 Dickinson, STAINER, MACOMBER, CALDERON, MARTELL, MFOSS,  
2 RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN,  
3 MOORE, RILEY, LUTRELL are deliberately indifferent about inmate safety.  
4

5 69. Plaintiff further alleges on his information and belief that Defendants  
6 CATE, McDonald, BEYER, Dickinson, STAINER, MACOMBER, CALDERON,  
7 MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI,  
8 ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL elected not to have  
9 policies and procedures in place so that they can avoid any liability. Without any  
10 policies and procedures, the injured party would be unable to show a breach of the  
11 policies and procedures.  
12

13 70. Plaintiff alleges on his information and belief this was done by  
14 Defendants CATE, McDonald, BEYER, Dickinson, STAINER, MACOMBER,  
15 CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA,  
16 MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL to avoid  
17 any liability as it relates to inmate injuries.  
18

19 71. Each warehouse structure has 1 supervisor and between 7 to 10  
20 working inmates. The contact between supervisor and inmate is regulated and  
21 restricted.  
22

23 72. Plaintiff was assigned to work in the Prison's warehouse that stored  
24 food, and given the task to assist in the unloading of food from the trailer trucks.  
25

26 73. Plaintiff was not trained on the safety with any regulatory guidelines  
27 as it relates to assisting the commercial vehicles to back up to the dock, unloading  
28 a commercial vehicle, and safety.

1           74. Plaintiff alleges on his information and belief that the lack of training  
2 was due to the deliberate choice by Defendants CATE, McDonald, BEYER,  
3 Dickinson, STAINER, MACOMBER, CALDERON, MARTELL, MFOSS,  
4 RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN,  
5 MOORE, RILEY, LUTRELL not to provide training. Plaintiff alleges on his  
6 information and belief that meetings between these individuals ensued discussing  
7 inmate safety and no policies were formulated or implemented to provide them  
8 any safety training or equipment. The reason why no training was provided is due  
9 to the fact that these inmates and nobody cares if they get hurt or not.

10           75. As an inmate, Plaintiff was paid \$ 0.11 per hours of work at the  
11 Prison warehouse.

12                           **No Care Was Given for Plaintiff's Physical Safety**

13           76. Plaintiff was provided limited training in the form of a single group  
14 video presentation, given work uniform (fluorescent green), and then shown the  
15 procedures used and authorized by CDCR at the prison for the unloading of cargo  
16 from the truck, which is none. The only training given was forklift driving.

17           77. The trailer trucks would back their trucks towards the ramp, stop, at  
18 which point Plaintiff or other inmates working that area were required to signal  
19 the truck driver to stop, approach the trailer from the rear, open the trailer door,  
20 step to the side and direct the truck driver to approach the ramp.

21           78. Plaintiff was required to do this while the truck's engine was still  
22 running, and the driver was not permitted to exit his vehicle and inmates,  
23 including Plaintiff, were prohibited from talking with drivers' period.  
24

1           79. No equipment was used to lock the wheels of the truck, no chocks  
2 were provided or used, and no method was available for the driver to verify  
3 whether any person was between the rear of his truck and the elevated loading  
4 dock. This was a choice made by Defendants CATE, McDonald, BEYER,  
5 Dickinson, STAINER, MACOMBER, CALDERON, MARTELL, MFOSS,  
6 RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN,  
7 MOORE, RILEY, LUTRELL.  
8  
9

10           80. The procedure required high level of co-ordination and attention on  
11 the part of the truck driver. The rules of the CDCR did not permit the truck driver  
12 to exit the vehicle, and inmates are not permitted to communicate with the truck  
13 driver other than the work-related hand signals. This lack of communication  
14 raised the risk factor for the Plaintiff or any inmate to get seriously injured at this  
15 type of job.  
16

17           81. Prisoners are provided no method to signal stop other than their voice  
18 and no device or tool or signal is provided to them to direct truck traffic.  
19 Defendants CATE, McDonald, BEYER, Dickinson, STAINER, MACOMBER,  
20 CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA,  
21 MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL made a  
22 conscience choice not provide inmates with devices or tools to signal the truck.  
23 Defendants CATE, McDonald, BEYER, Dickinson, STAINER, MACOMBER,  
24 CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA,  
25 MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL made a  
26 deliberate choice that the inmates did not need these devices to safely do their job  
27  
28

1 and protect them.

2  
3 82. Even though the inmates, including the Plaintiff, requested the  
4 devices, they were not provided and no explanation was given. Plaintiff and other  
5 inmates made this request to CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN,  
6 MOORE, RILEY, LUTRELL. Plaintiff and inmates were informed that CATE,  
7 McDonald, BEYER, Dickinson, STAINER, MACOMBER, CALDERON,  
8 MARTELL, MFOSS, RODRIGUEZ, TFOSS denied their request.  
9

10 83. No other persons assist in the maneuver by the truck driver to  
11 position into the unloading ramp, and the procedure is inherently dangerous for  
12 the prisoner assigned to the task because of the potential to be injured by the truck  
13 reversing into the ramp.  
14

15 84. The risk of being crushed by a truck against the fixed loading dock is  
16 apparent to all who witness the heavy truck reversing into the dock and the  
17 comparative exposure of a single person operating in the pathway of the truck and  
18 its loaded trailer.  
19

20 **Truck drivers speed through the process of unloading**

21 85. It is common for drivers to drive their trucks at a relatively high rate  
22 of speed inside the enclosed unloading area of the Prison.

23 86. Drivers are compensated by the number of loads per day. This  
24 financial incentive causes added lack of concern for safety issues by the drivers  
25 unloading goods at the loading docks.  
26

27 **Risk of Harm Was Common Knowledge**

28 87. Safety at work is an issue that concerns everyone; employers,



1 employees, their families and the community, including inmates and prison  
2 officials.  
3

4 88. It is general knowledge that working around trucks is a major cause  
5 of injury in the transport and storage industry. This concern is heightened for  
6 loading and unloading docks for warehouses.  
7

8 89. As published by California State Fund, an entity created in 1914 by  
9 the California state legislature and currently the largest provider of workers'  
10 compensation insurance in the state, "One of the busiest locations at a warehouse  
11 is the loading dock."  
12

13 90. The published risks associated to loading docks by the State of  
14 California, include the following areas: "Trailers, dock levelers, and rolling doors  
15 can cause pinch points, and elevated docks pose a fall hazard. Workers must pay  
16 attention to these hazards and focus on safety training, the proper equipment, and  
17 strict observation and supervision of work tasks." Plaintiff was required to work  
18 in the area that elevated docks were designed to avoid, the potential of being  
19 crushed against the loading ramp.  
20

21 91. Materials readily available from government agencies, like  
22 Occupational Safety & Health Administration of the United States Department of  
23 Labor, or the State Fund provided inexpensive, practical and straight-forward  
24 information on how to manage the risks of injury associated with working around  
25 trucks.  
26

27 92. It is common knowledge that vehicles, moving in and around  
28 workplaces, have the potential to cause occupational injuries and deaths in

1 workplaces in the United States.

2  
3 93. These risks were deliberately avoided and failed to be taken into  
4 account by Defendants CATE, McDonald, BEYER, Dickinson, STAINER,  
5 MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,  
6 CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
7 LUTRELL because they failed to have any proper training in place for the inmates,  
8 they failed to have proper policies and procedures in place for the inmates, they  
9 failed to provide the inmates the necessary equipment to perform their job safely,  
10 and they failed to consider the requests provided by the inmates to have these  
11 items for their safety.  
12

13 94. Plaintiff alleges on his information and belief that there were  
14 meetings discussing the inmates concerns that included CATE, McDonald,  
15 BEYER, Dickinson, STAINER, MACOMBER, CALDERON, MARTELL,  
16 MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON,  
17 CHAN, MOORE, RILEY, LUTRELL and during those meeting a decision was  
18 made that inmate safety was not important. These acts or non-acts rise to the level  
19 of deliberate indifference as it relates to the Plaintiff's safety while performing his  
20 loading dock work.  
21

22 95. Reversing, loading, unloading and pedestrian movement around  
23 vehicle traffic are the activities most frequently linked with workplace vehicle  
24 accidents. Vehicle-pedestrian accidents are serious because it can easily result in  
25 severe injury or death as a result of a vehicle weighing thousands of pounds  
26 moving at speed, resulting in great force impact on unprotected pedestrians, over a  
27  
28

1 short distance and short period of time.

2  
3 96. It is generally understood, that traffic and pedestrian movement at  
4 workplaces should be designed, planned and controlled so that pedestrians and  
5 vehicles can circulate safely.

6 97. The safest way to protect pedestrians is to eliminate the requirement  
7 for people and plant to operate at the same level (e.g. design the hazard out by  
8 building raised loading docks in new facilities); provide separate footpaths or  
9 walkways and eliminate pedestrian traffic where vehicles. Plaintiff was required  
10 to work at the same level as the truck and between the truck and a fixed platform.  
11

12 98. It is common knowledge that reversing accidents are a major cause of  
13 workplace injury and damage to vehicles, equipment and premises. It is common  
14 knowledge that injuries can occur when people at ground level assist in unloading  
15 trailers.  
16

17 99. It is common knowledge that when persons are opening the trailer  
18 doors the engine should be stopped and the key removed.  
19

20 100. In areas where pedestrians are at risk from motor vehicles, traffic  
21 management plan are normally designed to identify any hazards, assess the risks  
22 that may be caused by people coming into contact with a hazard, and put in place  
23 risk control measures to eliminate or minimize risks. No traffic management plan  
24 is known to have been prepared for the Plaintiff's workplace.  
25

26 101. No risk assessment for working around trucks is known to have been  
27 made by the Defendants for Plaintiff's workplace.

28 102. Occupational Safety and Health Administration ("OSHA") of the

1 United States Department of Labor and the State of California - OSHA, having  
2 jurisdiction over private contracting operators like Defendants BT, SL and  
3 LOPEZ, prohibit the exact procedure implemented and required by Defendants  
4 CATE.  
5

6 103. CAL OSHA failed to investigate the incident in this matter.

7 104. The law states: "Trucks shall not be driven up to anyone standing in  
8 front of a bench or other fixed object." 29 C.F.R. §1910.178(m)(1). Plaintiff was  
9 required to regularly come between a running truck reversing towards a fixed  
10 elevated ramp without assistance and operated by a single driver. Plaintiff had to  
11 perform these duties without proper training or equipment to ensure his safety.  
12

13 105. Plaintiff alleges on his information and belief that he and the other  
14 inmates were not trained and provided the necessary equipment due to the fact  
15 that Defendants did not care for their safety. There were no policies and procedure  
16 in place and after complaints were made nothing was done. Plaintiff also alleges  
17 that due to the lack of funds that the Defendants made a choice that inmate safety  
18 can be compromised.  
19

20 106. Plaintiff further alleges on information and belief that CAL-OSHA  
21 failed to investigate the incident based on the communications from CATE,  
22 McDonald, BEYER, Dickinson, STAINER, MACOMBER, CALDERON,  
23 MARTELL, MFOSS, RODRIGUEZ, TFOSS informing CAL OSHA that  
24 everything was fine.  
25

26 107. Plaintiff alleges on information and belief that CAL OSHA failed to  
27 investigate the incident because CAL OSHA would have fined CATE, McDonald,  
28

1 BEYER, Dickinson, STAINER, MACOMBER, CALDERON, MARTELL,  
2 MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON,  
3 CHAN, MOORE, RILEY, LUTRELL for failing to maintain a safe premise for  
4 work safety.

5  
6 108. No safety procedure consistent with minimum safe practices on  
7 loading dock, no safe work practices, and no meaningful safety equipment were  
8 provided to Plaintiff.

9  
10 109. Contrary to any safety precaution: instead of providing for  
11 communications, the procedures restricted communication; instead of requiring  
12 the vehicle to be turned off, the driver was required to have engines running;  
13 instead of locking the vehicle, the plaintiff was required to open the rear doors  
14 while the vehicle could move; instead of avoiding the need to come between the  
15 truck and the loading dock, plaintiff was required to place his body in the lane of  
16 travel between the truck and the dock.

17  
18 **Plaintiff Suffers Catastrophic Injury.**

19  
20 110. Plaintiff started work at the loading dock in April 2011, performing  
21 his work as required using the procedure established by the Prison.

22 111. On July 27, 2011, Plaintiff was working in the loading dock at the  
23 Prison warehouse.

24 112. Defendant Lopez drove his trailer truck into the Prison warehouse to  
25 drop off food supplies.

26  
27 113. Once in the loading dock, Defendant Lopez reversed his trailer truck  
28 to the loading dock ramp. Prior to aligning the trailer to the loading dock ramp,

1 the rear part of the trailer must be unlocked by an inmate.

2  
3 114. Plaintiff was to unlock the rear of Defendant Lopez's trailer, while  
4 the truck was running and in the absence of any equipment to lock the wheels of  
5 the truck.

6 115. Once the rear has been unlocked, Plaintiff or another inmate was to  
7 hand signal to Defendant Lopez that it is safe to align the trailer to the loading  
8 dock ramp.

9  
10 116. Prior to completing Plaintiff's unlocking task and subsequent hand  
11 signal by Plaintiff or another inmate, Defendant Lopez reversed the truck and  
12 crushed Plaintiff into the loading dock ramp.

13 117. Plaintiff was positioned in the center of the loading dock.

14  
15 118. When Defendant Lopez reversed his trailer truck, an audible alert in  
16 the form of beeping noise and hazard lights was supposed to activate. At the time  
17 of this incident, no audible alert or hazard lights was activated or was audible.  
18 Plaintiff was not provided sufficient time and space to avoid the truck.

19  
20 119. It was normal for truck driver to surge his vehicle in reverse at speeds  
21 a person near the rear could not avoid. It was imperative under the circumstances  
22 that the driver not lose track of any persons around the vehicle prior to moving.  
23 But no equipment or procedure was in place to minimize human error.

24 120. Defendants CATE, McDonald, BEYER, Dickinson, STAINER,  
25 MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,  
26 CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
27 LUTRELL failed to provide the Plaintiff and the other inmates with these devices  
28

1 as alleged above.

2  
3 121. These devices were not provided as the Defendants CATE,  
4 McDonald, BEYER, Dickinson, STAINER, MACOMBER, CALDERON,  
5 MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI,  
6 ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL made a deliberate  
7 choice not to provide them. This reflected by the fact that there were no policies  
8 and procedures in place for inmate safety at the time of the incident, (2) that the  
9 supervisors failed to listen to the request for the Plaintiff and other inmates for  
10 safety measures, (3) that Defendants made a conscience choice to spend money on  
11 prison guards rather than inmate safety, and (4) Defendants CATE, McDonald,  
12 BEYER, Dickinson, STAINER, MACOMBER, CALDERON, MARTELL,  
13 MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON,  
14 CHAN, MOORE, RILEY, LUTRELL were aware that the prisoners needed this  
15 device, but simply made a choice not to provide it based on the requests made by  
16 Plaintiff and other inmates.

17  
18  
19 122. Plaintiff did not expect Defendant Lopez to reverse his trailer and,  
20 therefore, was unable to move safely out of the way in time to avoid the crushing  
21 force impact as the rear of the trailer surged into him. Plaintiff was crushed by the  
22 trailer against the loading dock ramp.

23  
24 123. Plaintiff stopped breathing at the scene of accident. CPR was  
25 administrated to the Plaintiff.

26  
27 124. Plaintiff was rushed to an emergency hospital.

28 125. Plaintiff injuries include but not limited to major and catastrophic

1 injuries to the spine cord and brain, fractured jaw, severed nerves, crushed tissue,  
2 and deep lacerations.

3  
4 126. Plaintiff is hospitalized and recovering but is unable to breathe  
5 without the assistance of a ventilation machine to assist his damaged lungs and is  
6 paralyzed without any movements in the arms or legs.

7  
8 127. Defendant Lopez did not wait for Plaintiff to unlock the rear of the  
9 trailer and get out of the way. Defendant Lopez did not wait for Plaintiff or other  
10 inmates to provide the hand signal before reversing his trailer. Defendant Lopez  
11 along with the Defendants CATE, McDonald, BEYER, Dickinson, STAINER,  
12 MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,  
13 CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
14 LUTRELL deliberate indifference toward inmate safety caused his trailer to crush  
15 into Plaintiff, which resulted in Plaintiff's major injuries.

16  
17 128. Plaintiff is informed and believes that no alcohol or drugs were  
18 involved in the incident, and Plaintiff is informed and believes that testing for  
19 substances were administered on the driver.

20  
21 **Plaintiff's lack of training and support and the absence of any safety devices**  
22 **increased the danger**

23 129. Plaintiff was only provided limited training and support to perform  
24 his expected assignments in the form of a video watched with a group of six  
25 inmates in one session and a uniform. The video and the only training provided  
26 pertained to forklift driving, and not loading or unloading the commercial vehicle.

27  
28 130. The limited training did not provide any devices to slow or stop the



1 commercial vehicle, the limited training did not provide for the proper use of the  
2 hand signals, the limited training did not provide for the ability to speak with the  
3 truck driver to avoid any uncertainty as it relates with safety, there were no policies  
4 and procedure in place.  
5

6 131. Based on information belief, when the Plaintiff and other inmates  
7 informed Defendants CATE, McDonald, BEYER, Dickinson, STAINER,  
8 MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,  
9 CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
10 LUTRELL about this problem the inmates were ignored.  
11

12 132. Based on information and belief, Defendants CATE, McDonald,  
13 BEYER, Dickinson, STAINER, MACOMBER, CALDERON, MARTELL,  
14 MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON,  
15 CHAN, MOORE, RILEY, LUTRELL made a conscience choice not to supply the  
16 inmates with these safety features even though they were aware of the serious risk  
17 of injury to the inmates.  
18

19 133. Based on information and belief, Defendants CATE, McDonald,  
20 BEYER, Dickinson, STAINER, MACOMBER, CALDERON, MARTELL,  
21 MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON,  
22 CHAN, MOORE, RILEY, LUTRELL were aware of the serious risk as reports  
23 were provided to them by subordinates about the danger and harm to inmates, that  
24 loading docks without proper training and equipment is an ultra-hazardous activity,  
25 and these defendants attended several meetings to discuss these issues.  
26  
27

28 134. Based on information and belief, Defendants CATE, McDonald,

1 BEYER, Dickinson, STAINER, MACOMBER, CALDERON, MARTELL,  
2 MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON,  
3 CHAN, MOORE, RILEY, LUTRELL even though provided the information  
4 failed to make any changes to provide inmate safety.  
5

6 135. Based on information and belief, Defendants CATE, McDonald,  
7 BEYER, Dickinson, STAINER, MACOMBER, CALDERON, MARTELL,  
8 MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON,  
9 CHAN, MOORE, RILEY, LUTRELL made a conscience choice to recklessly  
10 disregard inmate safety by using the limited money due to the overcrowded prison  
11 for more prison guards than inmate safety.  
12

13 136. The Plaintiff was provided no instructions on hand signals, or the  
14 safe method of unloading trucks, or the non-apparent dangers of the work  
15 environment.  
16

17 137. The cost of painting drive lanes, installing mirrors, use of chocks, or  
18 requiring the driver to turn the engine off, would be negligible and pale in  
19 comparison to the cost the risk of being crushed between a trailer and the loading  
20 dock. Thus, the Defendants made a choice that the negligible cost for safety was  
21 not warranted to protect the inmates.  
22

23 138. The training video and the work uniform has no effect on the risk of a  
24 driver forbidden from rolling down his window and not permitted to leave the  
25 vehicle, from crushing a person standing in the blindside of the trailer.  
26

27 139. Defendants CATE, McDonald, BEYER, Dickinson, STAINER,  
28 MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,

1 CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
2 LUTRELL accordingly did nothing to address the risk of severe injury or death to  
3 inmate workers forced to enter the blindside of a truck, the area behind the trailer  
4 and its open doors that are not visible to the driver, and expose himself to the  
5 possibility of crushing force impact against the elevated loading dock.  
6

7 140. Based on information and belief, Defendants CATE, McDonald,  
8 BEYER, Dickinson, STAINER, MACOMBER, CALDERON, MARTELL,  
9 MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON,  
10 CHAN, MOORE, RILEY, LUTRELL made this choice aware of the catastrophic  
11 risk of injury to Plaintiff and the other inmates by recklessly disregarding this risk  
12 to avoid spending any additional monies or even creating a policy and procedure  
13 for inmate safety.  
14

15 141. Plaintiff's injuries were directly caused by an institution suffering  
16 from inadequate resources and overpopulation, requiring the use of dangerous  
17 loading docks at a high rate of activity, without any care expended to ensure any  
18 degree of safety for inmates exposed to moving vehicles in a confined space.  
19

20  
21 **Defendants Were Aware and Deliberately Indifferent To The Risk to**  
22 **Plaintiff.**

23 142. Since the mid-1970s, California's prison population has increased by  
24 over 750 percent, rising from approximately 20,000 inmates to an "all-time high"  
25 in October 2006 of over 170,000 inmates, with more than 160,000 housed in the  
26 state's adult prison institutions.  
27

28 143. The California legislature has recognized prison crowding as a

1 serious problem since at least 1987, when it convened a Blue Ribbon Commission  
2 on Inmate Population Management. The commission issued its final report in  
3 1990, with thirtyeight recommendations, including “alternative sanctions, and  
4 more programming [and] reentry programs.”

5  
6 144. Between 1990 and 2006, more than a dozen commissions and other  
7 groups issued reports with proposals to solve the overcrowding problem in  
8 California’s prison and associating overcrowding with widespread problems  
9 across all the prisons in California and directly affecting the safety of inmates.

10  
11 145. One of the most exhaustive reports completed during this period was  
12 the June 2004 report of the Corrections Independent Review Panel, which was  
13 appointed by Governor Schwarzenegger; chaired by former California Governor  
14 and Attorney General George Deukmejian noted that California’s “correctional  
15 system has grown to become the largest in the nation, rivaling in size and numbers  
16 even those of most other countries,” and that “[n]ot surprisingly, this massive  
17 system shows the strains of both its age and its decades-long growth.”

18  
19 146. The Panel found that “[a]dult prisons are severely overcrowded,  
20 imperiling the safety of both correctional employees and inmates.”

21  
22 147. In its report, the Corrections Independent Review Panel discussed  
23 three distinct measures of prison capacity: “design capacity,” “operable capacity,”  
24 and “maximum safe and reasonable capacity.” “Design capacity” is the term used  
25 for the past 50 years to designate the number of inmates a prison is designed to  
26 accommodate.

27  
28 148. California has never limited its prison population to 100% design

1 capacity, and has in some respects planned for inmate population levels that  
2 exceed 100% design capacity. California now regularly maintains inmate  
3 populations exceeding any reasonable limits to design, operable, and beyond the  
4 maximum safe and reasonable capacity. Some facilities hold inmates at 150  
5 percent, 175 percent, 190 percent or 200 percent to design capacity.  
6

7 149. The “overcrowding package” is “a staff enhancement of the design  
8 bed package.” The overcrowding package shows that CALIFORNIA, CDCR and  
9 CATE anticipated overcrowding of as much as 190 percent in their facilities.  
10

11 150. However, some of the facilities operated by CDCR were not  
12 designed with any provision for expansion, including the Prison that held Plaintiff  
13 because of the age of the facility.  
14

15 151. The third measure, “maximum ‘safe and reasonable’ capacity,” refers  
16 to “the maximum number of inmates who can safely and reasonably be housed in  
17 the prison system.” This definition takes into account only “the ‘safe and  
18 reasonable’ capacity of individual housing units according to inmate custody  
19 levels, staffing levels, and the physical structure of the units.” Units for inmates at  
20 higher custody levels have a lower maximum safe and reasonable capacity than  
21 units for inmates who present a lower security risk.  
22

23 152. The CDCR has determined the maximum safe and reasonable  
24 capacity of the state’s male prisons is . . . 179 percent of design capacity.  
25

26 153. However the standard used by CDCR, “Maximum ‘safe and  
27 reasonable’ capacity,” does not take into account “the need for humane  
28 conditions” incorporated into design capacity, or the need for programming space

1 incorporated into both design and operable capacity.

2  
3 154. California's inmate population has far exceeded the design capacity  
4 of the state's prison system for over twenty-five years. By October 2006, the  
5 state's adult prisons, excluding camps, were operating at 200.2% design capacity  
6 with 162,792 inmates.

7  
8 155. As of August 27, 2008, the population of these institutions was  
9 reduced to 195.9% design capacity with 156,352 inmates, largely as a result of  
10 shipping several thousand prisoners to Mississippi and other contract states.

11 156. The current level of crowding far exceeds even the maximum safe  
12 and reasonable capacity of the California prison system, which, by CDCR's own  
13 determination, is 179% design capacity for prisons holding male prisoners.

14  
15 157. In response to the severity of the prison crowding problem, Governor  
16 Arnold Schwarzenegger, declared a state of emergency on October 4, 2006. In his  
17 Prison Overcrowding State of Emergency Proclamation, the Governor declared  
18 that "all 33 of CDCR's prisons, including the Prison, are now at or above  
19 maximum operational capacity, and 29 of the prisons are so overcrowded that the  
20 CDCR is required to house more than 15,000 inmates in conditions that pose  
21 substantial safety risks"; that "the severe overcrowding in 29 CDCR prisons has  
22 caused substantial risk to the health and safety of the men and women who work  
23 inside these prisons and the inmates housed in them"; that "the overcrowding  
24 crisis gets worse with each passing day, creating an emergency in the California  
25 prison system"; and that "immediate action is necessary to prevent death and harm  
26 caused by California's severe prison overcrowding."  
27  
28

1           158. The risks enumerated by the Governor in his Proclamation include  
2 “increased, substantial risk for transmission of infectious illness”; security risks  
3 caused by line-of-sight problems for correctional officers, particularly in areas  
4 where inmates are triple-bunked and in “tight quarters”; and “thousands of gallons  
5 of sewage spills and environmental contamination” from overloading the prisons’  
6 sewage and wastewater systems.  
7

8           159. In January 2007, the Little Hoover Commission, a bipartisan and  
9 independent state body charged with conducting research and preparing  
10 recommendations to improve the economy, efficiency, and service of California  
11 state government, Cal. Gov’t. Code §§ 8501, 8521-8522, echoed the concerns in  
12 the Governor’s State of Emergency Proclamation, stating that “California’s  
13 prisons are out of space and running out of time.”  
14  
15

16           160. On June 27, 2007, the *Plata* and *Coleman* courts jointly heard oral  
17 argument were persuaded that the state had not adequately addressed its prison  
18 overcrowding crisis so as to make possible the remedying of the constitutional  
19 violations, and that consideration of a population reduction order was necessary in  
20 order to achieve that objective in both cases, both courts granted plaintiffs’  
21 motions. July 23, 2007 Order in *Plata*, 2007 WL 2122657; July 23, 2007 Order in  
22 *Coleman*, 2007 WL 2122636.  
23

24           161. Furthermore, the courts and a federal receiver has determined that  
25 overcrowding adversely impacts on the very process of implementing remedies  
26 because overcrowding, and the resulting day to day operational chaos of the  
27 CDCR, creates regular “crisis” situations which call for action on the part of the  
28

1 Receivership and take time, energy, and person power away from important  
2 remedial programs.

3  
4 162. The extent of overcrowding in the California prison system,  
5 approximately 190% of systemwide design capacity, is “extraordinary” and  
6 “almost unheard of.” The problem is “widespread” and “not restricted to just a  
7 few institutions. It’s occurred throughout the system.”

8  
9 163. In the context of prison conditions litigation “crowding” refers to the  
10 presence in a facility or prison system of a prisoner population exceeding that  
11 facility or system’s capacity. *See, e.g., Doty v. County of Lassen*, 37 F.3d 540, 543  
12 (9th Cir. 1994) (finding overcrowding where a jail’s actual population exceeded  
13 its design capacity by an average of approximately fifty percent); *Hoptowit v. Ray*,  
14 682 F.2d 1237, 1248-49 (9th Cir. 1982) (finding a penitentiary overcrowded  
15 where its population exceeded its design capacity); *see also Lareau v. Manson*,  
16 651 F.2d 96, 99-100 (2d Cir. 1981); cf. Random House Webster’s Unabridged  
17 Dictionary 482 (2d ed. 1998) (defining “crowded” as “filled to excess”).  
18

19  
20 164. A prison system’s capacity is not defined by square footage alone; it  
21 is also determined by the system’s resources and its ability to provide inmates  
22 with essential services such as food, air, and temperature and noise control.

23 165. These standards “take into account the need for humane conditions,  
24 as well as the need to prevent violence and move inmates to and from programs,  
25 such as mental health care, education classes, and drug abuse treatment.”  
26

27 166. Testimony from Jeanne Woodford, former warden at San Quentin  
28 and former acting Secretary of the CDCR; Doyle Wayne Scott, former Executive



1 Director of the Texas Department of Criminal Justice; Joseph Lehman, former  
2 head of corrections in Pennsylvania, Washington, and Maine; and Jeffrey Beard,  
3 current Secretary of the Pennsylvania Department of Corrections overwhelmingly  
4 establishes not only that crowding adversely affects every aspect of prison  
5 administration, forcing a constant state of crisis management.  
6

7 167. As a matter of judicial determination reviewing the reports from the  
8 federal receiver, the court has concluded that clear and convincing evidence  
9 establishes that crowding is the primary cause of the unconstitutional denial of  
10 medical and mental health care to California's prisoners. Quoting Secretary  
11 Woodford, who recently administered the California prison system and who  
12 shortly before that was the warden at San Quentin, "[o]vercrowding in the CDCR  
13 is extreme, its effects are pervasive and it is preventing the Department from  
14 providing adequate mental and medical health care to prisoners."  
15

16 168. Defendant CATE, the former head of the CDCR testified in court that  
17 "overpopulation makes everything we do more difficult,"  
18

19 169. Prison overcrowding has created a state of emergency in California's  
20 prisons, as the Governor has proclaimed. It forces prison administrators to devote  
21 most of their energy to addressing crises and has overwhelmed the prison system's  
22 management infrastructure.  
23

24 170. The consequences of crowding are often dangerous, and on many  
25 occasions fatal. Crowding contributes to an alarming number of extreme  
26 departures from the standard of care and an unacceptably high number of inmate  
27 deaths that are preventable or possibly preventable.  
28

1           171. Plaintiff alleges that San Quentin is a facility operating beyond any  
2 sane limits set by design capacity, operable capacity, and beyond maximum ‘safe  
3 and reasonable’ capacity,” and beyond any established limits to provide humane  
4 conditions, and beyond the ability to provide places for inmates to be physically  
5 safe. The overcrowding population and the crisis mentality of the State-  
6 Defendants responsible for the Prison has created and/or aggravated the dangerous  
7 risk associated with the loading dock that Plaintiff was employed at.  
8  
9

10           172. The risk created by the Defendants CATE, McDonald, BEYER,  
11 Dickinson, STAINER, MACOMBER, CALDERON, MARTELL, MFOSS,  
12 RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN,  
13 MOORE, RILEY, LUTRELL 's deliberate indifference to the physical safety of  
14 Plaintiff is a direct result of a physical facility used beyond any conceivable level  
15 operational capacity, and an institution operating under a crisis mentality caused  
16 by the overcrowding population without the resources, time, or incentive to  
17 address such mundane safety issues as a lone inmate working between a truck and  
18 an elevated loading dock. This was a choice made by these Defendants CATE,  
19 McDonald, BEYER, Dickinson, STAINER, MACOMBER, CALDERON,  
20 MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI,  
21 ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL that inmate safety was  
22 not important.  
23  
24

25           173. Defendants CATE, McDonald, BEYER, Dickinson, STAINER,  
26 MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,  
27 CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
28

1 LUTRELL failed to provide the Plaintiff and the other inmates with proper  
2 training, proper devices, policies and procedures, and guidance. They were not  
3 provided as the Defendants CATE, McDonald, BEYER, Dickinson, STAINER,  
4 MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,  
5 CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
6 LUTRELL made a deliberate choice not to provide them. This reflected by the  
7 fact that there were no policies and procedures in place for inmate safety at the  
8 time of the incident, (2) that the supervisors failed to listen to the request for the  
9 Plaintiff and other inmates for safety measures, (3) that Defendants made a  
10 conscience choice to spend money on prison guards rather than inmate safety, and  
11 (4) Defendants CATE, McDonald, BEYER, Dickinson, STAINER, MACOMBER,  
12 CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA,  
13 MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL were  
14 aware that the prisoners needed this device, but simply made a choice not to  
15 provide it and stated, even though aware of the risk of harm that inmate safety was  
16 not important.

17  
18  
19  
20  
21 174. Defendants CATE, McDonald, BEYER, Dickinson, STAINER,  
22 MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,  
23 CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
24 LUTRELL were aware of facts from which the inference could be drawn that a  
25 substantial risk of serious harm existed. Defendants were aware of the harm  
26 presented by a lone inmate like Plaintiff working in a confined space behind a  
27 running truck. In fact, these Defendants CATE, McDonald, BEYER, Dickinson,  
28

1 STAINER, MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ,  
2 TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
3 LUTRELL aware of the risk of harm deliberately chose not provide the proper  
4 safety measures for the inmates.  
5

6 175. Defendants CATE , McDonald, BEYER, Dickinson, STAINER,  
7 MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,  
8 CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
9 LUTRELL knew of the risk Plaintiff was exposed to and that Defendants inferred  
10 that substantial harm might result from the risk that Plaintiff in fact suffered.  
11 Defendants CATE, McDonald, BEYER, Dickinson, STAINER, MACOMBER,  
12 CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA,  
13 MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL still  
14 required Plaintiff to work under the unsafe conditions despite their knowledge of  
15 a substantial risk of serious harm. This risk was evident to Defendants CATE,  
16 McDonald, BEYER, Dickinson, STAINER, MACOMBER, CALDERON,  
17 MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI,  
18 ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL by the complaints  
19 made by the inmates, by reports generated to these defendants identifying the risk  
20 of harm, and discussions amongst themselves and others about the risk of harm  
21 but deliberately chose to not provide a safe place for the inmates to work.  
22

23 176. It is well known that a person can be crushed, severely injured or  
24 killed when moving close to a running truck moving in reverse. It is well known  
25 that the risk caused by a person working in a confined space between a truck and a  
26  
27  
28

1 fixed object, like a loading dock, is serious bodily injury and even death.

2  
3 177. To have provided no safeguards, equipment, or procedure, and  
4 instead requiring procedures that further limited the ability of the driver and the  
5 Plaintiff to communicate, to identify the location of the Plaintiff, to keep the truck  
6 engine running, and to require the high frequency of deliveries, and a short time to  
7 actually unload, Defendants CATE, McDonald, BEYER, Dickinson, STAINER,  
8 MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,  
9 CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
10 LUTRELL acted with deliberate indifference in the face of such knowledge and  
11 further aggravated the risk of harm actually suffered.  
12

### 13 **COUNT I**

#### 14 **42 U.S.C. SECTION 1983 FOR DELIBERATE INDIFFERENCE**

15  
16 **(Against State Defendants CATE, McDonald, BEYER, Dickinson, STAINER,**  
17 **MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,**  
18 **CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,**  
19 **LUTRELL)**  
20

21 178. Plaintiff incorporates herein by this reference each and every  
22 allegation contained in paragraphs 1 through 176 inclusive.

23 179. Plaintiff alleges that he suffered unconstitutional conditions of  
24 confinement in violation of the Eighth Amendment's prohibition against cruel and  
25 unusual punishment, as incorporated through the Due Process Clause of the  
26 Fourteenth Amendment.  
27

28 180. Plaintiff alleges that CATE as supervisor, acted and failed to act, in a

1 manner to protect the safety of Plaintiff, and was deliberately indifferent to  
2 Plaintiff's Eighth Amendment rights.  
3

4 181. Plaintiff further alleges that Defendants CATE, McDonald, BEYER,  
5 Dickinson, STAINER, MACOMBER, CALDERON, MARTELL, MFOSS,  
6 RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN,  
7 MOORE, RILEY, LUTRELL failed to provide the Plaintiff and the other inmates  
8 with proper training, proper devices, policies and procedures, and guidance. They  
9 were not provided as the Defendants CATE, McDonald, BEYER, Dickinson,  
10 STAINER, MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ,  
11 TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
12 LUTRELL made a deliberate choice not to provide them. This reflected by the  
13 fact that there were no policies and procedures in place for inmate safety at the  
14 time of the incident, (2) that the supervisors failed to listen to the request for the  
15 Plaintiff and other inmates for safety measures, (3) that Defendants made a  
16 conscience choice to spend money on prison guards rather than inmate safety, and  
17 (4) Defendants CATE, McDonald, BEYER, Dickinson, STAINER, MACOMBER,  
18 CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA,  
19 MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL were  
20 aware that the prisoners needed this device, but simply made a choice not to  
21 provide it and stated, even though aware of the risk of harm that inmate safety was  
22 not important.  
23

24 182. The Eighth Amendment proscribes more than physically barbarous  
25 punishments. The Amendment embodies "broad and idealistic concepts of dignity,  
26  
27  
28

1 civilized standards, humanity, and decency . . . ," Punishments are repugnant to  
2 the Eighth Amendment if they are incompatible with the evolving standards of  
3 decency that mark the progress of a maturing society.  
4

5 183. State defendants, each of them, acted with deliberate indifference to  
6 Plaintiff for his protected liberty interest in bodily integrity, and thus, violated the  
7 Constitution either directly, indirectly by policies instituted by them, and/or by the  
8 actions of persons directly supervised by them.  
9

10 184. These elementary principles establish the government's obligation to  
11 provide some minimal degree of safety and care for those whom it is punishing by  
12 incarceration.  
13

14 185. An inmate needs and must rely on prison authorities to safeguard his  
15 person from serious harm or provide a workplace free of substantial risks of  
16 serious harm; if the authorities fail to do so, those needs will not be met. In the  
17 worst cases, such a failure may actually produce physical "torture or a lingering  
18 death,"  
19

20 186. Plaintiff as inmate had no ability to change the work conditions he  
21 was exposed to, or to adjust the procedures he was required to perform to the  
22 exact letter under the instructions given.  
23

24 187. The deliberate indifference to the safety of prisoners constitutes the  
25 unnecessary and wanton infliction of pain to Plaintiff proscribed by the Eighth  
26 Amendment and is actionable under 42 USC§ 1983.  
27

28 188. As a result of defendants' deliberate indifference, Plaintiff was  
deprived of liberty and said deprivation objectively and sufficiently serious.

1           189. State defendants at all relevant times, had a sufficiently culpable state  
2 of mind, in allowing the deprivation to take place, being deliberately indifferent to  
3 the Plaintiff's health and safety.  
4

5           190. Defendants CATE, McDonald, BEYER, Dickinson, STAINER,  
6 MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,  
7 CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
8 LUTRELL violated rights guaranteed under the Eighth and Fourteenth  
9 Amendments, when they acted with deliberate indifference and/or their conduct  
10 was so reckless as to be tantamount to a desire to inflict harm.  
11

12           191. The risks known to state defendants were obvious with even a  
13 modicum of inquiry into the safety of the inmates in the work assignments created  
14 by state defendants and the risks were avoidable with the exercise of minimal  
15 care, expense and thought.  
16

17           192. The risks were directly created as result of state defendants' policies  
18 of detention and confinement which purposefully avoids issues of inmate safety in  
19 favor of maximum inmate population per facility at minimum costs. These  
20 policies were adopted, ratified, and their constitutional infirmities left unaddressed  
21 by Defendants CATE in his personal capacity; MICHAEL MARTEL, in his  
22 individual capacity; TERRI MCDONALD, in his individual capacity; BRYAN  
23 BEYER, in his individual capacity; KATHLEEN DICKINSON, in her individual  
24 capacity; MICHAEL STAINER, in his individual capacity; JEFF MACOMBER,  
25 in his individual capacity; ROBERT CALDERON, in his individual capacity;  
26 MICHAEL MARTEL, in his individual capacity; M. FOSS, in his individual  
27  
28



1 capacity; K. LUTRELL, in his individual capacity; RAYMOND MATTEUCCI,  
 2 in his individual capacity; RICHARD RILEY, in his individual capacity;  
 3 THOMAS ALIOTTO, in his individual capacity; GEORGE MOON, in his  
 4 individual capacity; RONALD CHAN, in his individual capacity; TAMMY  
 5 FOSS, in her individual capacity; M. CHIRILA, in his individual capacity; W.  
 6 RODRIGUEZ, in his individual capacity; DAVID MOORE, in his individual  
 7 capacity.  
 8  
 9

10 193. Defendants CATE, McDonald, BEYER, Dickinson, STAINER,  
 11 MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,  
 12 CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
 13 LUTRELL are sued in their individual capacity for acquiescence in the  
 14 constitutional deprivations of which this complaint is made and conduct that  
 15 showed a reckless or callous indifference to the rights of Plaintiff and similarly  
 16 situated inmates in their custodial care.  
 17

18 194. Defendants CATE, McDonald, BEYER, Dickinson, STAINER,  
 19 MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,  
 20 CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
 21 LUTRELL are liable under individual supervisor liability under §1983 when the  
 22 actions and inactions in creating the reckless procedures, unsafe conditions and  
 23 work assignment devoid of basic safety safeguards subjected to Plaintiff can  
 24 attributed to CATE, McDonald, BEYER, Dickinson, STAINER, MACOMBER,  
 25 CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS, CHIRILA,  
 26 MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY, LUTRELL 's  
 27  
 28

1 participation in the training, supervision, and control of subordinates who were  
2 directly and personally involved in exposing Plaintiff to conditions that ultimately  
3 caused Plaintiff's injuries.  
4

5 195. The actions of Defendants, acting under color of state law, deprived  
6 Plaintiff of his rights, privileges, and immunities under the laws and Constitution  
7 of the United States; in particular the right to be secure in his person and property;  
8 to be free from excessive use of force, and due process.  
9

10 196. Defendants deprived Plaintiff of rights secured by the Eighth and  
11 Fourteenth Amendments to the United States Constitution, in violation of 42  
12 U.S.C. Section 1983.  
13

14 197. On information and belief, state Defendants undertook to provide  
15 Plaintiff with minimum safety to permit Plaintiff to perform his assigned work  
16 duties without fear from undue danger or risk.  
17

18 198. On information and belief, state defendants failed to provide Plaintiff  
19 with any tools, training, or materials to perform his work duties to avoid the risk  
20 of harm that Plaintiff suffered.  
21

22 199. On information and belief, Plaintiff alleges that state Defendants  
23 failed to train its employees adequately to permit Plaintiff to perform his work  
24 duties without risk of the harm suffered.  
25

26 200. On information and belief, Plaintiff alleges that the state Defendants'  
27 failure to properly train its employees caused the deprivation of the Plaintiff's  
28 civil rights.

201. On information and belief, state defendants disregarded the safety of

1 Plaintiff and increased the risk of harm by their neglect and indifference. No  
2 consideration was given to the safety of Plaintiff.  
3

4 202. The risk of harm was aggravated by the lack of training and neglect  
5 of demanding minimum qualifications from state defendant contracting parties  
6 and employees.

7 203. The risk of harm was aggravated by the increased traffic, congested  
8 work space, lack of safety precautions or instructions, and prohibition on  
9 communications, that Plaintiff was forced to work in.  
10

11 204. As a result of the state defendants' actions and deliberate  
12 indifference, the Plaintiff was harmed.

13 205. On and information and belief, Plaintiff alleges that Defendants' use  
14 of excessive force was a substantial factor in cause Plaintiff's harm.  
15

16 206. As a direct and proximate result of the state defendants' actions,  
17 Plaintiff was deprived of rights, privileges, and immunities under the Eighth and  
18 Fourteenth Amendment to the United States Constitution and the laws of the State  
19 of California.  
20

21 207. Plaintiff alleges the state defendants failed to discipline its employees  
22 for the harm caused to the Plaintiff for the violation of his civil rights, thereby  
23 causing ratifying Defendants' unlawful conduct.

24 208. On information and belief, Plaintiff alleges that state defendants have  
25 engaged in outrageous conduct, which is oppressive in nature.  
26

27 209. On information and belief, Plaintiff alleges that state defendants'  
28 conduct was intended to cause serious harm to the Plaintiff, or with reckless

1 disregard for the Plaintiff and Plaintiff's rights.

2  
3 210. That as a direct and proximate result of the state defendants' conduct,  
4 and each of them, as described herein, proximately and directly caused Plaintiff to  
5 suffer harm.

6 211. That the above described wrongful conduct of the state defendants  
7 was malicious, oppressive, and done with the conscious disregard of Plaintiff's  
8 rights and well being, justifying the imposition of punitive damages and  
9 exemplary damages in such sum as the trier of fact shall deem appropriate.  
10

11 **COUNT II**

12 **42 U.S.C. SECTION 1983**

13 **(Against Defendants CATE, McDonald, BEYER, Dickinson, STAINER,**  
14 **MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,**  
15 **CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,**  
16 **LUTRELL)**  
17

18 212. Plaintiff incorporates herein by this reference each and every  
19 allegation contained in paragraphs 1 through 211 inclusive.  
20

21 213. The actions of state defendants, acting under color of state law,  
22 deprived Plaintiff of his rights, privileges, and immunities under the laws and  
23 Constitution of the United States; in particular the right to be secure in his person  
24 and property; to be free from excessive use of force, and due process.

25 214. State defendants deprived Plaintiff of rights secured by the Eighth  
26 and Fourteenth Amendments to the United States Constitution, in violation of 42  
27 U.S.C. Section 1983.  
28

1           215. On information and belief, state defendants undertook to provide  
2 Plaintiff with minimum safety to permit Plaintiff to perform his assigned work  
3 duties without fear from undue danger or risk.  
4

5           216. On information and belief, state defendants failed to provide Plaintiff  
6 with any tools, training, or materials to perform his work duties to avoid the risk  
7 of harm that Plaintiff suffered.  
8

9           217. On information and belief, Plaintiff alleges that state defendants  
10 failed to train its employees adequately to permit Plaintiff to perform his work  
11 duties without risk of the harm suffered.

12           218. On information and belief Defendants CATE, McDonald, BEYER,  
13 Dickinson, STAINER, MACOMBER, CALDERON, MARTELL, MFOSS,  
14 RODRIGUEZ, TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN,  
15 MOORE, RILEY, LUTRELL failed to provide the Plaintiff and the other inmates  
16 with proper training, proper devices, policies and procedures, and guidance. They  
17 were not provided as the Defendants CATE, McDonald, BEYER, Dickinson,  
18 STAINER, MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ,  
19 TFOSS, CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
20 LUTRELL made a deliberate choice not to provide them. This reflected by the  
21 fact that there were no policies and procedures in place for inmate safety at the  
22 time of the incident, (2) that the supervisors failed to listen to the request for the  
23 Plaintiff and other inmates for safety measures, (3) that Defendants made a  
24 conscience choice to spend money on prison guards rather than inmate safety, and  
25 (4) Defendants CATE, McDonald, BEYER, Dickinson, STAINER,  
26  
27  
28

1 MACOMBER, CALDERON, MARTELL, MFOSS, RODRIGUEZ, TFOSS,  
2 CHIRILA, MATTEUCI, ALIOTTO, MOON, CHAN, MOORE, RILEY,  
3 LUTRELL were aware that the prisoners needed this device, but simply made a  
4 choice not to provide it and stated, even though aware of the risk of harm that  
5 inmate safety was not important.  
6

7 219. On information and belief, Plaintiff alleges that the state defendants'  
8 failure to properly train its employees caused the deprivation of the Plaintiff's  
9 civil rights.  
10

11 220. On information and belief, state defendants disregarded the safety of  
12 Plaintiff and increased the risk of harm by their neglect and indifference. No  
13 consideration was given to the safety of Plaintiff.  
14

15 221. The harm suffered was the result of a policy that disregards basic  
16 requirements needed to avoid substantial risks of severe injury, like the injuries  
17 sustained by Plaintiff.  
18

19 222. The risk of harm was aggravated by the lack of training and neglect  
20 of demanding minimum qualifications from state defendant contracting parties  
21 and employees.  
22

23 223. The risk of harm was aggravated by the increased traffic, congested  
24 work space, lack of safety precautions or instructions, and prohibition on  
25 communications, that Plaintiff was forced to work in.  
26

27 224. On information and belief, Plaintiff alleges that the state defendants  
28 used excessive force, and the harm constituted cruel and unusual punishment.

225. On and information and belief, Plaintiff alleges that state defendants

1 were acting or purporting to act in the performance of their official duties.

2  
3 226. As a direct and proximate result of state defendants' actions, Plaintiff  
4 was arrested and or detained without justification and probable cause.

5 227. As a direct and proximate result of state defendants, while Plaintiff  
6 was arrested and or detained, state defendants used excessive force without cause  
7 or reasonable justification.

8  
9 228. As a result of the state defendants' actions, the Plaintiff was harmed.

10 229. On and information and belief, Plaintiff alleges that Defendants' use  
11 of excessive force was a substantial factor in cause Plaintiff's harm.

12 230. As a direct and proximate result of the state defendants' actions,  
13 Plaintiff was deprived of rights, privileges, and immunities under the Eighth and  
14 Fourteenth Amendment to the United States Constitution and the laws of the State  
15 of California.

16  
17 231. Plaintiff alleges the state defendants failed to discipline its employees  
18 for the harm caused to the Plaintiff for the violation of his civil rights, thereby  
19 causing ratifying Defendants' unlawful conduct.

20  
21 232. On information and belief, Plaintiff alleges that state defendants have  
22 engaged in outrageous conduct, which is oppressive in nature.

23 233. On information and belief, Plaintiff alleges that state defendants'  
24 conduct was intended to cause serious harm to the Plaintiff, or with reckless  
25 disregard for the Plaintiff and Plaintiff's rights.

26  
27 234. That as a direct and proximate result of the state defendants' conduct,  
28 and each of them, as described herein, proximately and directly caused Plaintiff to

1 suffer harm.

2  
3 235. That the above described wrongful conduct of the state defendants  
4 was malicious, oppressive, and done with the conscious disregard of Plaintiff's  
5 rights and well being, justifying the imposition of punitive damages and  
6 exemplary damages in such sum as the trier of fact shall deem appropriate.

7  
8 **COUNT III**

9 **NEGLIGENCE**

10 **(Against non-state Defendants)**

11 236. Plaintiff incorporates herein by this reference each and every  
12 allegation contained in paragraphs 1 through 235 inclusive.

13 237. On information and belief, Plaintiff alleges non-state defendants had  
14 a duty imposed by law to act reasonably to avoid foreseeable harm to persons like  
15 the plaintiff.

16  
17 238. On information and belief, Plaintiff alleges that he was harmed or  
18 offended by the non-state defendants' conduct.

19 239. On information and belief, Plaintiff alleges that non-state defendants  
20 have engaged in outrageous conduct, which is oppressive in nature.

21  
22 240. The negligent acts and omissions were the direct and proximate cause  
23 of Plaintiff's injuries, damages and losses to the Plaintiff; and, the Plaintiff is  
24 entitled to recover against the non-state defendants for damages caused by their  
25 negligence as set forth in this Complaint.

26  
27 241. That the above described wrongful conduct of the non-state  
28 defendants was malicious, oppressive, and done with the conscious disregard of



1 Plaintiff's rights and well being, justifying the imposition of punitive damages and  
2 exemplary damages in such sum as the trier of fact shall deem appropriate.  
3

4 **COUNT IV**

5 **NEGLIGENT SUPERVISION**

6 **(Against non-state defendants )**

7 242. Plaintiff realleges and incorporates by reference each and every  
8 allegation of paragraph 1 through 241 as more fully set forth herein.  
9

10 243. The non-state defendants are required to supervise the actions of its  
11 employees and contracting parties.

12 244. The defendants created an unreasonable risk of harm to the Plaintiff  
13 by failing to adequately supervise, control, or otherwise monitor the activities of  
14 its employees and agents, LOPEZ and STAGNITTO.  
15

16 245. The non-state defendants caused damages by way of its negligent  
17 supervision; and Plaintiff is entitled to recover against defendants for his injuries,  
18 damages and losses caused by defendants' conduct as set forth herein.  
19

20 246. Non-state defendants acted with oppression, fraud, and malice toward  
21 Plaintiff, in that they intended to cause injury to Plaintiff; they acted with willful  
22 and conscious disregard for the rights and safety of Plaintiff; and the defendant, in  
23 its attempt to conceal its conduct, intentionally made misrepresentations,  
24 committed deceit, and concealed material facts with the intention of depriving  
25 Plaintiff of his legal rights and causing him injury.  
26

27 **COUNT V.**

28 **NEGLIGENT TRAINING**

**(Against non-state defendants )**

247. Plaintiff realleges and incorporates by reference each and every allegation of paragraph 1 through 246 as more fully set forth herein.

248. The non-state defendants are required to supervise the actions of its employees and contracting parties.

249. The defendants created an unreasonable risk of harm to the Plaintiff for failing to adequately train its employees, defendants LOPEZ and STAGNITTO.

250. The non-state defendants caused injuries, damages and losses to the Plaintiff by virtue of its negligent training; and, the Plaintiff is entitled to recover against the non-state defendants for the injuries, damages and losses caused by the defendant's conduct as set forth herein.

251. In negligently training its officers, the non-state defendants acted with oppression, fraud, and malice toward Plaintiff, in that they intended to cause injury to Plaintiff; they acted with willful and conscious disregard for the rights and safety of Plaintiff; and the defendant, in its attempt to conceal its conduct, intentionally made misrepresentations, committed deceit, and concealed material facts with the intention of depriving Plaintiff of his legal rights and causing him injury.

**WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, jointly and severally, as follows:

1. For general damages;

2. For special damages;
3. For punitive damages;
4. For all remedies available for compensatory and exemplary damages;
5. For prejudgment interest according to law;
6. For Plaintiffs' costs and disbursement in this action, together with  
reasonable attorneys' fees incurred herein;
7. For such other and further relief as the Court may deem just and proper.
8. Plaintiff demands a Jury Trial.

Dated: March 25, 2013

LAW OFFICE OF GENE H. SHIODA

By: /James A. Kim/

Gene H. Shioda

James Alexander Kim

Attorneys for PLAINTIFF PAUL HOA

EXHIBIT A



STATE OF CALIFORNIA  
EDMUND G. BROWN JR., Governor

GOVERNMENT CLAIMS PROGRAM  
400 R Street, 5<sup>th</sup> Floor ♦ Sacramento, California 95811  
Mailing Address: P.O. Box 3035 ♦ Sacramento, California 95812  
Toll Free Telephone Number 1-800-955-0045 ♦ Fax Number: (916) 491-6443  
Internet: [www.vcgcb.ca.gov](http://www.vcgcb.ca.gov)

ANNA M. CABALLERO

Secretary

State and Consumer Services Agency  
Chairperson

JOHN CHIANG

State Controller

Board Member

MICHAEL A. RAMOS

San Bernardino County District Attorney

Board Member

JULIE NAUMAN

Executive Officer

Jason Yau Lie  
Attorney At Law  
3700 Wilshire Blvd Suite 645  
Los Angeles, CA 90010

October 28, 2011


RE: Claim G599627 for Paul Hoa

Dear Jason Lie,

The Victim Compensation and Government Claims Board rejected your claim at its hearing on October 20, 2011.

If you have questions about this matter, please mention letter reference 123 and claim number G599627 when you call or write your claim technician or analyst at (800) 955-0045.

Sincerely,

  
Jacqueline B. Tinetti, Program Manager  
Government Claims Program  
Victim Compensation and Government Claims Board

cc: Corrections and Rehabilitation

#### Warning

Subject to certain exceptions, you have only six months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

\*\*\*\*\*

It is not necessary or proper to include the Victims Compensation and Government Claims Board (Board) in your court action unless the Board was identified as a defendant in your original claim. Please consult Government Code section 955.4 regarding proper service of the summons.

Ltr 123 Claim Rejection

## CERTIFICATE OF SERVICE

Case Name: P. Hoa vs. M. Cate, et al. No. 3:12-cv-02078-EMC

I hereby certify that on March 25, 2013, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### **SECOND AMENDED COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 25, 2013, at Los Angeles, California.

Vivian M. Joo

Declarant

/s/ Vivian M. Joo

Signature